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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,188	05/05/2004	Mark L. Mathis	10057-719.201	7264
66854	7590	11/01/2007	EXAMINER	
SHAYGLENN LLP 2755 CAMPUS DRIVE SUITE 210 SAN MATEO, CA 94403			NGUYEN, TUAN VAN	
			ART UNIT	PAPER NUMBER
			3731	
			MAIL DATE	DELIVERY MODE
			11/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/840,188

Applicant(s)

MATHIS ET AL.

Examiner

Tuan V. Nguyen

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3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :10/22/07,08/02/07,05/11/07,10/06/05.

## DETAILED ACTION

### ***Response to Restriction Requirements***

1. According to the Response to the Restriction Requirements filed on August 8, 2007, applicants elected without traverse Group II of claims 17-24 and further elected Species 6 of Figures 9. Applicants assert that claims 17-20 read on the elected Species and claims 17 and 18 are generic to all species. Claims 1-16 and 21-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Solem et al (U.S. 2003/0135267).**
4. Referring to **claims 17-19**, for example, Solem discloses (see Figs. 21-25) a method of changing of shape in a part of the body of an organism (see Technical Field of The Invention) the method comprising: providing a tissue shaping device

(see Fig. 21) comprising stent or proximal anchor 22, stent or distal anchor 23, a connector K/20 or focal deflector; placing the device in coronary sinus or lumen adjacent the target tissue which is the mitral valve 25, 26; expanding the stent or anchors 22, 23 to anchor the device; applying a shaping force (see Figs. 22-25) from the focal deflector against a lumen wall to modify the shape of the target tissue (see paragraphs [0139]-[0148]).

5. Referring to **claim 20**, Solem discloses (see Fig. 24) before the shaped changing member 20 is activated into the original condition the member 20 is orienting away from the target tissue.

#### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d

937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619

(CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 17 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent No. 6,908,478 to Alferness et al. Claim 17 recites a method of modifying target tissue shape comprising: providing a tissue shaping device comprising proximal and distal anchors, a focal deflector; placing the device in a lumen adjacent the target tissue; applying a shaping force from the focal deflector against a lumen wall to modify the shape of the target tissue; and expanding the anchors to anchor the device. It is clear that all steps of claim 17 are to be found in claim 15. Noting that claim 15 of U.S. Patent No. 6,908,478 to Alferness et al. recites a method of effecting mitral valve geometry of a heart comprising: advancing a guide catheter into the coronary sinus of the heart adjacent to the mitral valve annulus; pushing self-deploying first anchor and second anchor; providing the cable extending between first anchor and second anchor; tensioning the cable and locking the cable to the second anchor. By definition, coronary sinus is a vein, thus, it has a lumen. The difference between claim 17 of the application and claim 15 of the patent lies in the

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fact that the patent claim includes more elements such as the catheter and more specific such as the mitral valve and coronary sinus, thus, claim 15 is much more specific. Although the conflicting claims are not identical, they are not patentably distinct from each other.

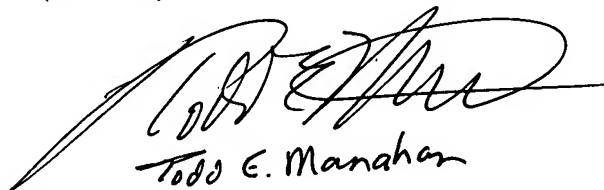
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan V. Nguyen  
October 26, 2007



Todd E. Manahan  
SPE 3731